

REPORTER'S TRANSCRIPT OF  
TELEPHONIC STATUS CONFERENCE  
Monday, January 23, 2023  
8:30 a.m.  
LOS ANGELES, CALIFORNIA

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1 THE COURTROOM DEPUTY: I don't know what it is.

2 THE COURT: Do we have anybody for the defense?

3 MR. LUMISH: Yes, Your Honor. This is Doug Lumish  
4 speaking for Skyryse and several other folks that we identified  
5 before the call started.

6 THE COURT: Let me ask again, is there anybody here  
7 for the plaintiff?

8 MS. ANDOH: Sorry, Your Honor. This is Rena Andoh  
9 for plaintiff. I misunderstood your instruction. Thank you.

10 THE COURT: We are here for a status conference. I  
11 saw the status conference report.

12 Let me ask just a couple of questions. There was  
13 a proposed order that was filed on or about March the 11th of  
14 2022, it's Docket Number 25. That proposed order and  
15 stipulation was signed off by the Judge; is that correct?

16 MS. ANDOH: Yes, Your Honor.

17 THE COURT: Okay. And I guess the parties in the  
18 joint status report were basically informing me of the  
19 positions of both sides and the past procedures that were done  
20 by the Court in the Eastern District of New York prior to the  
21 matter being transferred to here.

22 Let me just ask, there was in the report -- the  
23 joint status report is Docket No. 341 -- there is a listing for  
24 four, I guess, pending motions, and then the parties were also  
25 indicating their intention in regards to certain other motions.

1                   What I would just simply do is ask about the  
2 scheduling of the -- putting back on calendar the pending  
3 motions that previously were filed.

4                   Is that something that needs to be done?

5                   MS. ANDOH: So, Your Honor, it depends. So the --  
6 sorry, this is Ms. Andoh speaking for Moog.

7                   The current status of discovery is such that most  
8 discovery in the case has been stayed pending the completion of  
9 Moog identifying its trade secrets in line with an order that  
10 was issued by the Court back in August.

11                  So most of these motions that are pending were  
12 suspended by that order and are still suspended at this time  
13 because the trade secret identification has not yet occurred.

14                  So I think that from Moog's perspective, what we  
15 really need to do is complete our trade secret identification,  
16 which we just actually received additional materials that we  
17 needed for that process last week from a third party.

18                  So we are certainly in position to issue that  
19 trade secret identification pursuant to a timeline set by the  
20 Court, and at that point, we would argue that the pending  
21 motions can then be addressed.

22                  THE COURT: Let me ask, I presume that earlier there  
23 was a confidentiality agreement signed off on by everybody; is  
24 that correct?

25                  MS. ANDOH: That is right, Your Honor.

1                   THE COURT: Let me ask Moog, how long is it going to  
2 take for those trade secret identifications to be provided to  
3 defendants?

4                   MS. ANDOH: So, Your Honor, I think if the Court is  
5 willing to give us the right to supplement, because there are  
6 still outstanding discovery that has not been made fully  
7 available yet; for example, we just received a number of third  
8 party productions from Skyryse's employee represented by Latham  
9 on Friday, so if we're able to produce based on what we already  
10 have, I believe we could submit the trade secret identification  
11 document within the next three to four weeks.

12                  I think what we would ask is that we would be  
13 able to retain the right to supplement it, again, because we're  
14 still waiting for certain materials to be made fully available  
15 to us so we can complete that process.

16                  THE COURT: All right. Let me hear a response from  
17 the defense. What does the defense say about all of that?

18                  MR. LUMISH: Good morning, Your Honor. This is Doug  
19 Lumish speaking only for Skyryse. There is separate counsel  
20 for the individual defendants.

21                  I think we agree in large part, which is -- I'm  
22 not happy to say there hasn't been a lot of that in this case  
23 -- we do think that the first thing should happen is a trade  
24 secret identification, and that really everything else should  
25 be held in abeyance until that happens.

1                   We have provided more discovery than could  
2 possibly be needed already, and so we have been waiting a long  
3 time for this trade secret identification.

4                   We would ask Your Honor to order that occur  
5 without any further delay.

6                   The only concern I have is the scope of  
7 supplementation. We don't object to supplement if it's based  
8 on something that wasn't already produced or that they don't  
9 already have, Moog, in their possession, custody, and control.

10                  But we have, for the entirety of the case, been  
11 concerned about the hindsight problem that Your Honor would be  
12 familiar with in the trade secret litigation, where the  
13 plaintiff roots around in the defendant's discovery, then  
14 identifies trade secrets with hindsight saying that is my  
15 stuff, instead of going the opposite direction, which we hoped  
16 would happen in this lawsuit.

17                  While we wouldn't object to some level of  
18 supplemental if it were based on something new that was already  
19 not already produced or in their possession, we would like to  
20 reserve our right to object to supplementation that goes beyond  
21 that.

22                  THE COURT: All right. Let me hear from other  
23 defense counsel. Is there any other defendant that wants to  
24 say something on the record?

25                  MR. GREEN: Yes, thank you, Your Honor. This is

1 Anthony Green on behalf of the individual defendants.

2 I'm in agreement with Mr. Lumish that we do  
3 believe that the identification should happen without further  
4 delay, and if there is any supplementation, there should be a  
5 good basis for it, and it should be based on something that is  
6 not currently in their possession, custody, and control.

7 THE COURT: All right. I would presume that the  
8 trade secret information would be in their possession and  
9 control, it's just that they don't know whether or not those  
10 trade secrets are the trade secrets that are going to be  
11 involved in this case.

12 Am I correct on that?

13 MS. ANDOH: Yes, Your Honor. This is Ms. Andoh.  
14 There are a few different points on that.

15 First of all, this case is relatively unique,  
16 certainly in my experience, because both, the volume of the  
17 information that was taken, we're talking about 1.4 million  
18 files that were stolen that are part of this case, and also the  
19 nature by which they were stolen, namely, that a large number  
20 of the files -- there were 130,000 of them -- were spoliated by  
21 one of the individual defendants at the time she stole them.

22 So in a very strange turn of events, the most  
23 complete copy of the trade secret sets that we are aware of  
24 that is currently in existence is actually on a hard drive that  
25 is not in Moog's possession.

1                   It actually belongs to the individual defendant,  
2 Alin Pilkington, 1.2 million files, and that device is  
3 currently housed at this mutual forensic center, iDS, that you  
4 saw referenced in the parties' joint status report.

5                   So when we're talking about this idea of the  
6 trade secrets being uniquely within Moog's possession and  
7 ability, it's not necessarily as clear cut as that, and it's  
8 not worth getting into the weeds on that on this particular  
9 call.

10                  Again, I think that we are in a position to  
11 identify what we intend to rely upon, for the most part, in  
12 pursuing a preliminary injunction at this point.

13                  The order that was issued that permitted the  
14 trade secret identification also made clear that this was for  
15 the preliminary injunction phase of the case only, and that the  
16 purpose of this, at least in part, was to try to focus on the  
17 trade secrets that we would be presenting in support of a  
18 preliminary injunction motion to a number and size and clarity  
19 that was manageable for a Court in context with such a hearing,  
20 and that it was without waiver of our right to be able to  
21 supplement after the preliminary injunction fees.

22                  I will also just note that this idea of this  
23 hindsight argument, that was an argument that was raised by  
24 Skyryse and the individual defendants initially when they made  
25 the motion for trade secret identification, and the Western

1 District rejected that in allowing us to actually have access  
2 to these materials before we issued our trade secret  
3 identification.

4 So I think we -- I think that we are in a  
5 position to do this. I think that we should be able to provide  
6 trade secret identification on the very large volume of  
7 materials, and that it will satisfy the Court.

8 MR. LUMISH: May I say something, Your Honor?

9 THE COURT: Sorry, is that Mr. Lumish?

10 MR. LUMISH: Yes, sir. Thank you, Your Honor.

11 So two points, if I might.

12 One, is this case is actually fairly conventional  
13 in its fact pattern, two employees left their company and came  
14 to ours.

15 They are accused of bringing hard drive work and  
16 materials with them. That is not some earth-shatteringly new  
17 fact pattern that needs special treatment. They have had  
18 access to those documents for over a year.

19 They say they don't have them, but they are at  
20 iDS, this neutral discovery vendor where they can fully -- they  
21 Moog -- can fully inspect those documents. They have their own  
22 copies.

23 There has been over a year of opportunity to sift  
24 through that and identify what they think is in our possession  
25 or in the individual defendants' possession, so there is no

1 basis for any further delay.

2                   The second thing I wanted to address, Your Honor,  
3 was the notion that the trade secret identification should  
4 somehow only be for a preliminary injunction motion.

5                   We strenuously disagree with that. We have an  
6 interrogatory that is out. It's a broad interrogatory that  
7 asks for narrative, an explanation of every trade secret they  
8 claim was taken by Skyryse, and I believe the individual  
9 defendants have the same interrogatory.

10                  We want that answered in full and not with some  
11 caveat that this is the only ones we are going to seek a PI on  
12 and we will tell you all of the other ones for trial at some  
13 other date when we feel like it.

14                  We should get a full response of that  
15 interrogatory before anything happens, in our view.

16                  THE COURT: I understand the latter point, but I  
17 think the plaintiff is conceding to the extent that they are  
18 going to be providing you supposedly within the next three  
19 weeks the trade secrets that are going to be the subject of  
20 this action.

21                  The only thing they are reserving is that if  
22 their later discovery somehow produces additional trade  
23 secrets, in which case they would supplement, but they would  
24 only supplement on a basis of a motion and in that situation  
25 they would utilize, I would presume, like, a Rule-16 bases for

1 allowing those additional trade secrets to be interjected into  
2 the case.

3 Let me ask plaintiff's counsel, that is my  
4 understanding; am I correct?

5 MS. ANDOH: Your Honor, the way I understand the  
6 order from the Western District of this case, this issue was  
7 already litigated substantially. I do not agree with  
8 Mr. Lumish's assessment of what the Court's order actually  
9 says.

10 The purpose of the trade secret identification  
11 was for the preliminary injunction phase, and so we agree we  
12 would not be sandbagging the defendants with any additional  
13 trade secrets that we do not identify for purposes of the  
14 preliminary injunction hearing, but all of the discovery that  
15 is currently being conducted in this case has been limited by  
16 stipulation --

17                   THE COURT: Let me stop you for a second. I don't  
18 understand that position in the sense that it seems to me --  
19 this is the reason why I asked about the March 11th, 2022  
20 order, because it seems to me, even though it was crouched in  
21 terms of kind of almost like being a TRO-type situation, given  
22 the scope of it, it seems to me if you are going to make a  
23 motion for preliminary injunction, I don't know what else you  
24 are going to seek -- much more than what is already covered by  
25 that order in the sense that it precludes the use of certain

1 information, et cetera, et cetera.

2 And so, in essence, you would utilize that order  
3 or continue that order, but identify more firmly the trade  
4 secrets that are the subject matter of that order, so I kind of  
5 agree with the defense.

6 I mean, in other words, once those trade secrets  
7 are identified, then for purposes of litigating the preliminary  
8 injunction, we have to make a determination as to whether or  
9 not in fact those items are sufficiently established as trade  
10 secrets, and if they are, the use of those would be limited by  
11 the preliminary injunction order.

12 MS. ANDOH: Well, Your Honor, I think there are two  
13 different issues that are getting conflated here. If I'm the  
14 one that is confused, I apologize.

15 The question of what relief we're seeking in  
16 conjunction with the preliminary injunction is not something  
17 that is specific to this trade secret identification in that,  
18 at the end of the day, the stipulated March 11 order, which we  
19 would be looking for something similar to in respect to the  
20 preliminary injunction, actually Moog's known public  
21 information.

22 The question of what a trade secret is for  
23 purposes of the misappropriation claim is a different analysis  
24 than the question of what they are restricted from using as far  
25 as the rest is concerned.

1                   I just want to make sure we're not conflating  
2 those two issues.

3                   In terms of us demonstrating a likelihood of  
4 success on the merits on our misappropriation claim, we're  
5 prepared to move forward with the subset of the materials that  
6 were stolen, identifying them as trade secrets at this point in  
7 time and putting on evidence to demonstrate that  
8 misappropriation.

9                   Because of the volume of material involved and  
10 the number of military programs involved, we have not at this  
11 point in time planned to present all 20 programs in context of  
12 a preliminary injunction motion.

13                   Therefore, we're not doing a line-by-line  
14 identification of all 20 of those programs in context with the  
15 trade secret ID.

16                   As we understood the point of the order, the  
17 point of the order was to place defendants on sufficient notice  
18 of the trade secrets that we intended to use that the  
19 demonstration for likelihood of success on the merits on our  
20 misappropriation claim in order to be able to obtain  
21 preliminary injunctive relief.

22                   It was not discussed in the Western District as  
23 being a preclusive document for purposes of the entire case.

24                   THE COURT: Again, I don't know quite how to  
25 respond, because again, I wasn't the judge in this case since

1 its inception.

2                   It would seem to me that if you were seeking a  
3 preliminary injunction, you should be seeking a preliminary  
4 injunction on all of the trade secrets.

5                   MS. ANDOH: We're seeking a preliminary injunction  
6 on preventing a further dissemination of all of the materials  
7 that were taken.

8                   As far as our criteria for likelihood of success  
9 on the merits, we are trying to limit the volume of the  
10 material we are presenting in a preliminary injunction motion,  
11 enough to demonstrate our ability to succeed on that claim.

12                  THE COURT: Let me ask, on what basis would you be  
13 seeking an exclusion of dissemination of materials unless they  
14 were trade secrets?

15                  MS. ANDOH: The stuff -- the 1.4 million files that  
16 were stolen. The vast majority of them were nonpublic.  
17 Whether we choose to identify all of them as trade secrets for  
18 the basis of our misappropriation claims, that is a different  
19 issue than whether Skyryse retains the right to continue to  
20 circulate our materials. That was the position that was taken  
21 from the outset of the case.

22                  THE COURT: All right. Let me ask then, it seems to  
23 me that the first thing that still would need to be done is for  
24 the plaintiff to identify the trade secrets information that  
25 the parties have initially discussed to some extent.

1                   So what I would do is I would require that the  
2 plaintiff provide that information to the defendants by  
3 February the 20th, and thereafter, I would want the parties to  
4 discuss the pending motions.

5                   I will not -- at this point in time, I don't  
6 think I would have -- unless the parties want to discuss  
7 potential motions, but if you want to, that is fine as well.

8                   I will set this matter back on calendar for March  
9 the 2nd for a status conference.

10                  What I want is by February the 28th -- by  
11 February 27th a joint report as to scheduling of the pending  
12 motions, and if there is any other motions that the parties are  
13 envisioning, to give me a schedule for that as well. I will  
14 discuss that schedule with the parties on March the 2nd.

15                  What I also want the parties to do is just to  
16 give me what the parties feel would be the trial date in this  
17 matter. I won't necessarily be setting that on March the 2nd,  
18 but I am curious what the parties are envisioning the trial  
19 date for.

20                  Does either side have any questions?

21                  MR. LUMISH: Your Honor, this is Doug Lumish for  
22 Skyryse. Are you ordering an identification of trade secrets  
23 for February 20th?

24                  THE COURT: Yes. With the understanding that those  
25 trade secrets would be the trade secrets in this case except to

1 the extent that the plaintiff can demonstrate that there was  
2 some further discovery or something else that triggered the  
3 revelation of additional trade secrets information that would  
4 be the subject of this case.

5 For the Court to, at this point in time, throw  
6 those trade secrets in this case as opposed to some other case,  
7 the motion would have to be made under standards that would be  
8 similar to Rule 16.

9 MR. LUMISH: Understood, Your Honor. Thank you very  
10 much.

11 THE COURT: All right. Does anyone else have  
12 anything to say?

13 No? All right. Thank you. Have a nice day.

14 MR. GREEN: Thank you, Your Honor.

15 MR. LUMISH: Thank you, Your Honor.

16 (The proceedings were concluded at 9:21 a.m.)

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4 STATE OF CALIFORNIA )

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16 | Date: 25th day of January, 2023.

/s/ TERRI A. HOURIGAN

TERRI A. HOURIGAN, CSR NO. 3838, RPR, CRR  
Federal Court Reporter

/	9:21 [1] - 17:16	B		cut [1] - 9:7 CV [1] - 1:7
1	A			D
<b>1.2</b> [1] - 9:2 <b>1.4</b> [2] - 8:17, 15:15 <b>10006</b> [1] - 2:15 <b>10112</b> [1] - 2:6 <b>11</b> [1] - 13:18 <b>11th</b> [2] - 4:13, 12:19 <b>130,000</b> [1] - 8:20 <b>140</b> [1] - 2:10 <b>16</b> [1] - 17:8	<b>a.m</b> [3] - 1:14, 3:2, 17:16 <b>abeyance</b> [1] - 6:25 <b>ability</b> [2] - 9:7, 15:11 <b>able</b> [5] - 6:9, 6:13, 9:20, 10:5, 14:20 <b>above-entitled</b> [1] - 18:12 <b>access</b> [2] - 10:1, 10:18 <b>accused</b> [1] - 10:15 <b>action</b> [1] - 11:20 <b>additional</b> [5] - 5:16, 11:22, 12:1, 12:12, 17:3 <b>address</b> [1] - 11:2 <b>addressed</b> [1] - 5:21 <b>agree</b> [4] - 6:21, 12:7, 12:11, 13:5 <b>agreement</b> [2] - 5:23, 8:2 <b>al</b> [1] - 1:8 <b>ALIN</b> [1] - 2:12 <b>Alin</b> [1] - 9:2 <b>allowing</b> [2] - 10:1, 12:1 <b>almost</b> [1] - 12:21 <b>analysis</b> [1] - 13:23 <b>ANDOH</b> [11] - 2:4, 4:8, 4:16, 5:5, 5:25, 6:4, 8:13, 12:5, 13:12, 15:5, 15:15 <b>Andoh</b> [4] - 3:17, 4:8, 5:6, 8:13 <b>ANGELES</b> [4] - 1:14, 1:24, 3:1, 18:3 <b>answered</b> [1] - 11:10 <b>Anthony</b> [1] - 8:1 <b>ANTHONY</b> [1] - 2:13 <b>apologize</b> [1] - 13:14 <b>appear</b> [1] - 3:14 <b>APPEARANCES</b> [1] - 2:1 <b>appearing</b> [1] - 3:15 <b>argue</b> [1] - 5:20 <b>argument</b> [2] - 9:23 <b>assessment</b> [1] - 12:8 <b>Attorney</b> [3] - 2:5, 2:9, 2:14 <b>August</b> [1] - 5:10 <b>available</b> [2] - 6:7, 6:14 <b>aware</b> [1] - 8:23	<b>based</b> [4] - 6:9, 7:7, 7:18, 8:5 <b>bases</b> [1] - 11:25 <b>basis</b> [5] - 8:5, 11:1, 11:24, 15:12, 15:18 <b>behalf</b> [1] - 8:1 <b>belongs</b> [1] - 9:1 <b>beyond</b> [1] - 7:20 <b>bringing</b> [1] - 10:15 <b>broad</b> [1] - 11:6 <b>Broadway</b> [1] - 2:14 <b>BY</b> [3] - 2:4, 2:9, 2:13	<b>concerned</b> [2] - 7:11, 13:25 <b>concluded</b> [1] - 17:16 <b>conducted</b> [1] - 12:15 <b>CONFERENCE</b> [1] - 1:13 <b>conference</b> [4] - 4:10, 4:11, 16:9, 18:13 <b>confidentiality</b> [1] - 5:23 <b>conflated</b> [1] - 13:13 <b>conflating</b> [1] - 14:1 <b>conformance</b> [1] - 18:13 <b>confused</b> [1] - 13:14 <b>conjunction</b> [1] - 13:16 <b>context</b> [3] - 9:19, 14:11, 14:14 <b>continue</b> [2] - 13:3, 15:19 <b>control</b> [3] - 7:9, 8:6, 8:9 <b>conventional</b> [1] - 10:12 <b>copies</b> [1] - 10:22 <b>copy</b> [1] - 8:23 <b>correct</b> [5] - 4:15, 5:24, 8:12, 12:4, 18:10 <b>Case</b> [1] - 1:7 <b>caveat</b> [1] - 11:11 <b>CCRR</b> [1] - 1:22 <b>center</b> [1] - 9:3 <b>Central</b> [1] - 18:8 <b>CENTRAL</b> [2] - 1:2 <b>certain</b> [3] - 4:25, 6:14, 12:25 <b>certainly</b> [2] - 5:18, 8:16 <b>CERTIFICATE</b> [1] - 18:1 <b>certify</b> [1] - 18:8 <b>cetera</b> [2] - 13:1 <b>choose</b> [1] - 15:17 <b>circulate</b> [1] - 15:20 <b>claim</b> [5] - 11:8, 13:23, 14:4, 14:20, 15:11 <b>claims</b> [1] - 15:18 <b>clarity</b> [1] - 9:18 <b>clear</b> [2] - 9:7, 9:14 <b>Code</b> [1] - 18:9 <b>company</b> [1] - 10:13 <b>complete</b> [3] - 5:15, 6:15, 8:23 <b>completion</b> [1] - 5:8, 11:17 <b>conceding</b> [1] - 11:17 <b>concern</b> [1] - 7:6	<b>date</b> [3] - 11:13, 16:16, 16:19 <b>Date</b> [1] - 18:16 <b>defendant</b> [2] - 7:23, 9:1 <b>DEFENDANT</b> [2] - 2:7, 2:12 <b>defendant's</b> [1] - 7:13 <b>defendants</b> [9] - 6:3, 6:20, 8:1, 8:21, 9:24, 11:9, 12:12, 14:17, 16:2 <b>Defendants</b> [1] - 1:9 <b>defendants'</b> [1] - 10:25 <b>defense</b> [7] - 3:18, 3:19, 4:2, 6:17, 7:23, 13:5 <b>delay</b> [3] - 7:5, 8:4, 11:1 <b>demonstrate</b> [3] - 14:7, 15:11, 17:1 <b>demonstrating</b> [1] - 14:3 <b>demonstration</b> [1] - 14:19 <b>DEPUTY</b> [4] - 3:7, 3:15, 3:22, 4:1 <b>determination</b> [1] - 13:8 <b>device</b> [1] - 9:2 <b>different</b> [4] - 8:14, 13:13, 13:23, 15:18 <b>direction</b> [1] - 7:15 <b>disagree</b> [1] - 11:5 <b>discovery</b> [9] - 5:7, 5:8, 6:6, 7:1, 7:13, 10:20, 11:22, 12:14, 17:2 <b>discuss</b> [3] - 16:4, 16:6, 16:14 <b>discussed</b> [2] - 14:22, 15:25 <b>dissemination</b> [2] - 15:6, 15:13 <b>District</b> [7] - 3:8, 4:20, 10:1, 12:6, 14:22, 18:7, 18:8 <b>DISTRICT</b> [3] - 1:1, 1:2, 1:3 <b>DIVISION</b> [1] - 1:2 <b>Docket</b> [2] - 4:14, 4:23 <b>document</b> [2] - 6:11,
2		C		
<b>20</b> [2] - 14:11, 14:14 <b>2022</b> [2] - 4:14, 12:19 <b>2023</b> [3] - 1:13, 3:1, 18:16 <b>20th</b> [2] - 16:3, 16:23 <b>213</b> [1] - 1:24 <b>22-9094-GW</b> [1] - 1:7 <b>23</b> [2] - 1:13, 3:1 <b>25</b> [1] - 4:14 <b>25th</b> [1] - 18:16 <b>27th</b> [1] - 16:11 <b>28</b> [1] - 18:9 <b>28th</b> [1] - 16:10 <b>2nd</b> [3] - 16:9, 16:14, 16:17				
3				
<b>30</b> [1] - 2:5 <b>32nd</b> [1] - 2:14 <b>341</b> [1] - 4:23 <b>350</b> [1] - 1:23 <b>3838</b> [2] - 1:22, 18:20				
4				
<b>4311</b> [1] - 1:23 <b>45</b> [1] - 2:14				
7				
<b>753</b> [1] - 18:9				
8				
<b>894-2849</b> [1] - 1:24 <b>8:30</b> [2] - 1:14, 3:2				
9				
<b>90012</b> [1] - 1:24 <b>94025</b> [1] - 2:10				

<p>14:23  <b>documents</b> [2] -  10:18, 10:21  <b>done</b> [3] - 4:19, 5:4,  15:23  <b>Doug</b> [3] - 4:3, 6:18,  16:21  <b>DOUGLAS</b> [1] - 2:9  <b>drive</b> [2] - 8:24,  10:15  <b>Drive</b> [1] - 2:10</p>	<p>9:2, 15:15  <b>fine</b> [1] - 16:7  <b>firmly</b> [1] - 13:3  <b>first</b> [3] - 6:23, 8:15,  15:23  <b>FIRST</b> [1] - 1:23  <b>Floor</b> [1] - 2:14  <b>focus</b> [1] - 9:16  <b>folks</b> [1] - 4:4  <b>FOR</b> [3] - 2:3, 2:7,  2:12  <b>foregoing</b> [1] - 18:10  <b>forensic</b> [1] - 9:3  <b>format</b> [1] - 18:12  <b>forward</b> [1] - 14:5  <b>four</b> [2] - 4:24, 6:11  <b>Friday</b> [1] - 6:9  <b>full</b> [2] - 11:10, 11:14  <b>fully</b> [4] - 6:6, 6:14,  10:20, 10:21</p>	<p><b>I</b></p>	<p><b>J</b></p>	<p><b>March</b> [6] - 4:13,  12:19, 13:18, 16:8,  16:14, 16:17  <b>material</b> [2] - 14:9,  15:10  <b>materials</b> [9] - 5:16,  6:14, 10:2, 10:7,  10:16, 14:5, 15:6,  15:13, 15:20  <b>matter</b> [7] - 3:10,  3:23, 4:21, 13:4, 16:8,  16:17, 18:12  <b>mean</b> [1] - 13:6  <b>Menlo</b> [1] - 2:10  <b>merits</b> [3] - 14:4,  14:19, 15:9  <b>might</b> [1] - 10:11  <b>military</b> [1] - 14:10  <b>million</b> [3] - 8:17,  9:2, 15:15  <b>misappropriate</b> [1] -  13:23  <b>misappropriation</b> [4] -  14:4, 14:8, 14:20,  15:18  <b>misunderstood</b> [1] -  4:9  <b>MONDAY</b> [1] - 3:1  <b>Monday</b> [1] - 1:13  <b>Moog</b> [7] - 3:10,  3:23, 5:6, 5:9, 6:1,  7:9, 10:21  <b>MOOG</b> [1] - 1:5  <b>Moog's</b> [4] - 5:14,  8:25, 9:6, 13:20  <b>morning</b> [1] - 6:18  <b>most</b> [4] - 5:7, 5:11,  8:22, 9:11  <b>motion</b> [8] - 9:18,  9:25, 11:4, 11:24,  12:23, 14:12, 15:10,  17:7  <b>motions</b> [9] - 4:24,  4:25, 5:3, 5:11, 5:21,  16:4, 16:7, 16:12  <b>move</b> [1] - 14:5  <b>MR</b> [9] - 4:3, 6:18,  7:25, 10:8, 10:10,  16:21, 17:9, 17:14,  17:15  <b>MS</b> [10] - 4:8, 4:16,  5:5, 5:25, 6:4, 8:13,  12:5, 13:12, 15:5,  15:15  <b>MULLIN</b> [1] - 2:4  <b>mutual</b> [1] - 9:3</p>
<p><b>E</b></p> <p><b>earth</b> [1] - 10:16  <b>earth-shatteringly</b> [1] - 10:16  <b>Eastern</b> [1] - 4:20  <b>either</b> [1] - 16:20  <b>employee</b> [1] - 6:8  <b>employees</b> [1] -  10:13  <b>end</b> [1] - 13:18  <b>entire</b> [1] - 14:23  <b>entirety</b> [1] - 7:10  <b>entitled</b> [1] - 18:12  <b>envisioning</b> [2] -  16:13, 16:18  <b>essence</b> [1] - 13:2  <b>established</b> [1] -  13:9  <b>et</b> [3] - 1:8, 13:1  <b>events</b> [1] - 8:22  <b>evidence</b> [1] - 14:7  <b>example</b> [1] - 6:7  <b>except</b> [1] - 16:25  <b>exclusion</b> [1] - 15:13  <b>existence</b> [1] - 8:24  <b>experience</b> [1] - 8:16  <b>explanation</b> [1] -  11:7  <b>extent</b> [3] - 11:17,  15:25, 17:1</p>	<p><b>G</b></p> <p><b>GEORGE</b> [1] - 1:3  <b>given</b> [1] - 12:21  <b>GREEN</b> [3] - 2:13,  7:25, 17:14  <b>Green</b> [1] - 8:1  <b>guess</b> [2] - 4:17,  4:24</p>	<p><b>H</b></p> <p><b>HAMPTON</b> [1] - 2:4  <b>happy</b> [1] - 6:22  <b>hard</b> [2] - 8:24, 10:15  <b>hear</b> [2] - 6:16, 7:22  <b>hearing</b> [2] - 9:19,  12:14  <b>held</b> [2] - 6:25, 18:11  <b>hereby</b> [1] - 18:8  <b>hindsight</b> [3] - 7:11,  7:14, 9:23  <b>Honor</b> [20] - 4:3, 4:8,  4:16, 5:5, 5:25, 6:4,  6:18, 7:4, 7:11, 7:25,  8:13, 10:8, 10:10,  11:2, 12:5, 13:12,  16:21, 17:9, 17:14,  17:15  <b>HONORABLE</b> [1] -  1:3  <b>hoped</b> [1] - 7:15  <b>HOURIGAN</b> [4] -  1:22, 18:6, 18:19,  18:20  <b>housed</b> [1] - 9:3</p>	<p><b>I</b></p> <p><b>ID</b> [1] - 14:15  <b>idea</b> [2] - 9:5, 9:22  <b>identification</b> [16] -  5:13, 5:15, 5:19, 6:10,  6:24, 7:3, 8:3, 9:14,  9:25, 10:3, 10:6, 11:3,  12:10, 13:17, 14:14,  16:22  <b>identifications</b> [1] -  6:2  <b>identified</b> [2] - 4:4,  13:7  <b>identifies</b> [1] - 7:14  <b>identify</b> [6] - 9:11,  10:24, 12:13, 13:3,  15:17, 15:24  <b>identifying</b> [2] - 5:9,  14:6  <b>iDS</b> [2] - 9:3, 10:20  <b>INC</b> [3] - 1:5, 1:8, 2:7  <b>Inc</b> [2] - 3:10, 3:23  <b>inception</b> [1] - 15:1  <b>indicating</b> [1] - 4:25  <b>individual</b> [7] - 6:20,  8:1, 8:21, 9:1, 9:24,  10:25, 11:8  <b>information</b> [7] - 8:8,  8:17, 13:1, 13:21,  15:24, 16:2, 17:3  <b>informing</b> [1] - 4:18  <b>injunction</b> [17] -  9:12, 9:15, 9:18, 9:21,  11:4, 12:11, 12:14,  12:23, 13:8, 13:11,  13:16, 13:20, 14:12,  15:3, 15:4, 15:5,  15:10  <b>injunctive</b> [1] - 14:21  <b>inspect</b> [1] - 10:21  <b>instead</b> [1] - 7:15  <b>instruction</b> [1] - 4:9  <b>intend</b> [1] - 9:11  <b>intended</b> [1] - 14:18  <b>intention</b> [1] - 4:25  <b>interjected</b> [1] - 12:1  <b>interrogatory</b> [4] -  11:6, 11:9, 11:15  <b>involved</b> [3] - 8:11,  14:9, 14:10  <b>issue</b> [4] - 3:20, 5:18,  12:6, 15:19  <b>issued</b> [3] - 5:10,  9:13, 10:2  <b>issues</b> [2] - 13:13,  14:2  <b>items</b> [1] - 13:9</p>	<p><b>JANUARY</b> [1] - 3:1  <b>January</b> [2] - 1:13,  18:16  <b>joint</b> [4] - 4:18, 4:23,  9:4, 16:11  <b>judge</b> [1] - 14:25  <b>JUDGE</b> [1] - 1:3  <b>Judge</b> [1] - 4:15  <b>judicial</b> [1] - 18:13</p>
<p><b>F</b></p> <p><b>fact</b> [3] - 10:13,  10:17, 13:9  <b>fairly</b> [1] - 10:12  <b>familiar</b> [1] - 7:12  <b>far</b> [2] - 13:24, 15:8  <b>February</b> [4] - 16:3,  16:10, 16:11, 16:23  <b>FEDERAL</b> [1] - 1:23  <b>Federal</b> [2] - 18:6,  18:20  <b>fees</b> [1] - 9:21  <b>few</b> [1] - 8:14  <b>filed</b> [2] - 4:13, 5:3  <b>files</b> [4] - 8:18, 8:20,</p>	<p><b>H</b></p> <p><b>HAMPTON</b> [1] - 2:4  <b>happy</b> [1] - 6:22  <b>hard</b> [2] - 8:24, 10:15  <b>hear</b> [2] - 6:16, 7:22  <b>hearing</b> [2] - 9:19,  12:14  <b>held</b> [2] - 6:25, 18:11  <b>hereby</b> [1] - 18:8  <b>hindsight</b> [3] - 7:11,  7:14, 9:23  <b>Honor</b> [20] - 4:3, 4:8,  4:16, 5:5, 5:25, 6:4,  6:18, 7:4, 7:11, 7:25,  8:13, 10:8, 10:10,  11:2, 12:5, 13:12,  16:21, 17:9, 17:14,  17:15  <b>HONORABLE</b> [1] -  1:3  <b>hoped</b> [1] - 7:15  <b>HOURIGAN</b> [4] -  1:22, 18:6, 18:19,  18:20  <b>housed</b> [1] - 9:3</p>	<p><b>I</b></p> <p><b>ID</b> [1] - 14:15  <b>idea</b> [2] - 9:5, 9:22  <b>identification</b> [16] -  5:13, 5:15, 5:19, 6:10,  6:24, 7:3, 8:3, 9:14,  9:25, 10:3, 10:6, 11:3,  12:10, 13:17, 14:14,  16:22  <b>identifications</b> [1] -  6:2  <b>identified</b> [2] - 4:4,  13:7  <b>identifies</b> [1] - 7:14  <b>identify</b> [6] - 9:11,  10:24, 12:13, 13:3,  15:17, 15:24  <b>identifying</b> [2] - 5:9,  14:6  <b>iDS</b> [2] - 9:3, 10:20  <b>INC</b> [3] - 1:5, 1:8, 2:7  <b>Inc</b> [2] - 3:10, 3:23  <b>inception</b> [1] - 15:1  <b>indicating</b> [1] - 4:25  <b>individual</b> [7] - 6:20,  8:1, 8:21, 9:1, 9:24,  10:25, 11:8  <b>information</b> [7] - 8:8,  8:17, 13:1, 13:21,  15:24, 16:2, 17:3  <b>informing</b> [1] - 4:18  <b>injunction</b> [17] -  9:12, 9:15, 9:18, 9:21,  11:4, 12:11, 12:14,  12:23, 13:8, 13:11,  13:16, 13:20, 14:12,  15:3, 15:4, 15:5,  15:10  <b>injunctive</b> [1] - 14:21  <b>inspect</b> [1] - 10:21  <b>instead</b> [1] - 7:15  <b>instruction</b> [1] - 4:9  <b>intend</b> [1] - 9:11  <b>intended</b> [1] - 14:18  <b>intention</b> [1] - 4:25  <b>interjected</b> [1] - 12:1  <b>interrogatory</b> [4] -  11:6, 11:9, 11:15  <b>involved</b> [3] - 8:11,  14:9, 14:10  <b>issue</b> [4] - 3:20, 5:18,  12:6, 15:19  <b>issued</b> [3] - 5:10,  9:13, 10:2  <b>issues</b> [2] - 13:13,  14:2  <b>items</b> [1] - 13:9</p>	<p><b>JANUARY</b> [1] - 3:1  <b>January</b> [2] - 1:13,  18:16  <b>joint</b> [4] - 4:18, 4:23,  9:4, 16:11  <b>judge</b> [1] - 14:25  <b>JUDGE</b> [1] - 1:3  <b>Judge</b> [1] - 4:15  <b>judicial</b> [1] - 18:13</p>	<p><b>K</b></p> <p><b>kind</b> [2] - 12:21, 13:4  <b>known</b> [1] - 13:20</p>
				<p><b>L</b></p> <p><b>large</b> [3] - 6:21, 8:19,  10:6  <b>last</b> [1] - 5:17  <b>LATHAM</b> [1] - 2:8  <b>Latham</b> [1] - 6:8  <b>latter</b> [1] - 11:16  <b>Law</b> [3] - 2:5, 2:9,  2:14  <b>lawsuit</b> [1] - 7:16  <b>least</b> [1] - 9:16  <b>left</b> [1] - 10:13  <b>level</b> [1] - 7:17  <b>likelihood</b> [3] - 14:3,  14:19, 15:8  <b>limit</b> [1] - 15:9  <b>limited</b> [2] - 12:15,  13:10  <b>line</b> [4] - 3:16, 5:9,  14:13  <b>line-by-line</b> [1] -  14:13  <b>listing</b> [1] - 4:23  <b>litigated</b> [1] - 12:7  <b>litigating</b> [1] - 13:7  <b>litigation</b> [1] - 7:12  <b>LLP</b> [2] - 2:8, 2:13  <b>looking</b> [1] - 13:19  <b>LOS</b> [4] - 1:14, 1:24,  3:1, 18:3  <b>Lumish</b> [5] - 4:3,  6:19, 8:2, 10:9, 16:21  <b>LUMISH</b> [8] - 2:9,  4:3, 6:18, 10:8, 10:10,  16:21, 17:9, 17:15  <b>Lumish's</b> [1] - 12:8</p>
			<p><b>M</b></p>	<p><b>majority</b> [1] - 15:16  <b>manageable</b> [1] -  9:19</p>
				<p><b>N</b></p>
				<p><b>namely</b> [1] - 8:19</p>

<p><b>narrative</b> [1] - 11:7  <b>nature</b> [1] - 8:19  <b>necessarily</b> [2] - 9:7, 16:17  <b>need</b> [2] - 5:15, 15:23  <b>needed</b> [2] - 5:17, 7:2  <b>needs</b> [2] - 5:4, 10:17  <b>neutral</b> [1] - 10:20  <b>New</b> [5] - 2:6, 2:15, 4:20  <b>new</b> [2] - 7:18, 10:16  <b>next</b> [2] - 6:11, 11:18  <b>nice</b> [1] - 17:13  <b>NO</b> [2] - 1:22, 18:20  <b>nonpublic</b> [1] - 15:16  <b>note</b> [1] - 9:22  <b>notice</b> [1] - 14:17  <b>notion</b> [1] - 11:3  <b>number</b> [4] - 6:7, 8:19, 9:18, 14:10  <b>Number</b> [1] - 4:14</p>	<p><b>P</b></p> <p><b>page</b> [1] - 18:12  <b>Park</b> [1] - 2:10  <b>part</b> [4] - 6:21, 8:18, 9:11, 9:16  <b>particular</b> [1] - 9:8  <b>parties</b> [10] - 4:17, 4:24, 15:25, 16:3, 16:6, 16:12, 16:14, 16:15, 16:18  <b>parties'</b> [1] - 9:4  <b>party</b> [2] - 5:17, 6:8  <b>past</b> [1] - 4:19  <b>pattern</b> [2] - 10:13, 10:17  <b>pending</b> [7] - 4:24, 5:2, 5:8, 5:11, 5:20, 16:4, 16:11  <b>permitted</b> [1] - 9:13  <b>perspective</b> [1] - 5:14  <b>phase</b> [2] - 9:15, 12:11  <b>phone</b> [1] - 3:19  <b>PI</b> [1] - 11:11  <b>PILKINGTON</b> [1] - 2:12  <b>Pilkington</b> [1] - 9:2  <b>place</b> [1] - 14:17  <b>plaintiff</b> [10] - 3:12, 3:13, 3:25, 4:7, 4:9, 7:13, 11:17, 15:24, 16:2, 17:1  <b>PLAINTIFF</b> [1] - 2:3  <b>plaintiff's</b> [1] - 12:3  <b>Plaintiffs</b> [1] - 1:6  <b>planned</b> [1] - 14:11  <b>Plaza</b> [1] - 2:5  <b>point</b> [9] - 5:20, 9:12, 11:16, 14:6, 14:11, 14:16, 14:17, 16:5, 17:5  <b>points</b> [2] - 8:14, 10:11  <b>position</b> [5] - 5:18, 9:10, 10:5, 12:18, 15:20  <b>positions</b> [1] - 4:19  <b>possession</b> [8] - 7:9, 7:19, 8:6, 8:8, 8:25, 9:6, 10:24, 10:25  <b>possibly</b> [1] - 7:2  <b>potential</b> [1] - 16:7  <b>precludes</b> [1] - 12:25  <b>preclusive</b> [1] - 14:23  <b>preliminary</b> [18] - 9:12, 9:15, 9:18, 9:21, 11:4, 12:11, 12:14,</p>	<p>12:23, 13:7, 13:11, 13:16, 13:20, 14:12, 14:21, 15:3, 15:5, 15:10  <b>prepared</b> [1] - 14:5  <b>present</b> [1] - 14:11  <b>presenting</b> [2] - 9:17, 15:10  <b>presume</b> [3] - 5:22, 8:7, 11:25  <b>preventing</b> [1] - 15:6  <b>previously</b> [1] - 5:3  <b>problem</b> [1] - 7:11  <b>procedures</b> [1] - 4:19  <b>proceedings</b> [2] - 17:16, 18:11  <b>process</b> [2] - 5:17, 6:15  <b>produce</b> [1] - 6:9  <b>produced</b> [2] - 7:8, 7:19  <b>produces</b> [1] - 11:22  <b>productions</b> [1] - 6:8  <b>programs</b> [3] - 14:10, 14:11, 14:14  <b>proposed</b> [2] - 4:13, 4:14  <b>provide</b> [2] - 10:5, 16:2  <b>provided</b> [2] - 6:2, 7:1  <b>providing</b> [1] - 11:18  <b>public</b> [1] - 13:20  <b>purpose</b> [2] - 9:16, 12:10  <b>purposes</b> [4] - 12:13, 13:7, 13:23, 14:23  <b>pursuant</b> [2] - 5:19, 18:9  <b>pursuing</b> [1] - 9:12  <b>putting</b> [2] - 5:2, 14:7</p>	<p><b>regulations</b> [1] - 18:13  <b>rejected</b> [1] - 10:1  <b>relatively</b> [1] - 8:15  <b>relief</b> [2] - 13:15, 14:21  <b>rely</b> [1] - 9:11  <b>remain</b> [1] - 3:7  <b>Rena</b> [1] - 4:8  <b>RENA</b> [1] - 2:4  <b>report</b> [6] - 4:11, 4:18, 4:22, 4:23, 9:4, 16:11  <b>reported</b> [1] - 18:11  <b>REPORTER</b> [2] - 1:23, 18:1  <b>Reporter</b> [2] - 18:7, 18:20  <b>REPORTER'S</b> [1] - 1:12  <b>represented</b> [1] - 6:8  <b>require</b> [1] - 16:1  <b>reserve</b> [1] - 7:20  <b>reserving</b> [1] - 11:21  <b>respect</b> [1] - 13:19  <b>respond</b> [1] - 14:25  <b>response</b> [2] - 6:16, 11:14  <b>rest</b> [1] - 13:25  <b>restricted</b> [1] - 13:24  <b>retain</b> [1] - 6:13  <b>retains</b> [1] - 15:19  <b>revelation</b> [1] - 17:3  <b>RICHTER</b> [1] - 2:4  <b>ROBERT</b> [1] - 2:12  <b>Rockefeller</b> [1] - 2:5  <b>ROOM</b> [1] - 1:23  <b>roots</b> [1] - 7:13  <b>RPR</b> [1] - 18:20  <b>Rule</b> [1] - 17:8  <b>Rule-16</b> [1] - 11:25</p>	<p><b>secret</b> [20] - 5:13, 5:15, 5:19, 6:2, 6:10, 6:24, 7:3, 7:12, 8:8, 8:23, 9:14, 9:25, 10:2, 10:6, 11:3, 11:7, 12:10, 13:17, 13:22, 14:15  <b>secrets</b> [24] - 5:9, 7:14, 8:10, 9:6, 9:17, 11:19, 11:23, 12:1, 12:13, 13:4, 13:6, 13:10, 14:6, 14:18, 15:4, 15:14, 15:17, 15:24, 16:22, 16:25, 17:3, 17:6  <b>Section</b> [1] - 18:9  <b>seek</b> [2] - 11:11, 12:24  <b>seeking</b> [5] - 13:15, 15:2, 15:3, 15:5, 15:13  <b>seem</b> [1] - 15:2  <b>sense</b> [2] - 12:18, 12:25  <b>separate</b> [1] - 6:19  <b>session</b> [1] - 3:9  <b>set</b> [2] - 5:19, 16:8  <b>sets</b> [1] - 8:23  <b>setting</b> [1] - 16:17  <b>several</b> [1] - 4:4  <b>shatteringly</b> [1] - 10:16  <b>SHEPPARD</b> [1] - 2:4  <b>side</b> [1] - 16:20  <b>sides</b> [1] - 4:19  <b>sift</b> [1] - 10:23  <b>signed</b> [2] - 4:15, 5:23  <b>similar</b> [2] - 13:19, 17:8  <b>simply</b> [1] - 5:1  <b>situation</b> [2] - 11:24, 12:21  <b>size</b> [1] - 9:18  <b>SKYRYSE</b> [2] - 1:8, 2:7  <b>Skyryse</b> [8] - 3:11, 3:24, 4:4, 6:19, 9:24, 11:8, 15:19, 16:22  <b>Skyryse's</b> [1] - 6:8  <b>someone</b> [1] - 3:12  <b>sorry</b> [3] - 4:8, 5:6, 10:9  <b>SPADOFORA</b> [1] - 2:13  <b>speaking</b> [3] - 4:4, 5:6, 6:19  <b>special</b> [1] - 10:17  <b>specific</b> [1] - 13:17  <b>spoliated</b> [1] - 8:20</p>
	<p><b>Q</b></p> <p><b>questions</b> [2] - 4:12, 16:20  <b>quite</b> [1] - 14:24</p>	<p><b>R</b></p> <p><b>raised</b> [1] - 9:23  <b>really</b> [2] - 5:15, 6:24  <b>Realtime</b> [1] - 18:6  <b>reason</b> [1] - 12:19  <b>received</b> [2] - 5:16, 6:7  <b>record</b> [1] - 7:24  <b>referenced</b> [1] - 9:4  <b>regards</b> [1] - 4:25</p>	<p><b>sandbagging</b> [1] - 12:12  <b>satisfy</b> [1] - 10:7  <b>saw</b> [2] - 4:11, 9:4  <b>schedule</b> [2] - 16:13, 16:14  <b>scheduling</b> [2] - 5:2, 16:11  <b>SCHWARTZBERG</b> [1] - 2:13  <b>scope</b> [2] - 7:6, 12:22  <b>Scott</b> [1] - 2:10  <b>seated</b> [1] - 3:7  <b>second</b> [3] - 3:21, 11:2, 12:17</p>	

<b>standards</b> [1] - 17:7 <b>started</b> [1] - 4:5 <b>STATE</b> [1] - 18:4 <b>States</b> [4] - 3:8, 18:7, 18:9, 18:14 <b>STATES</b> [1] - 1:1 <b>status</b> [7] - 4:10, 4:11, 4:18, 4:23, 5:7, 9:4, 16:9 <b>STATUS</b> [1] - 1:13 <b>stayed</b> [1] - 5:8 <b>stenographically</b> [1] - 18:11 <b>still</b> [4] - 5:12, 6:6, 6:14, 15:23 <b>stipulated</b> [1] - 13:18 <b>stipulation</b> [2] - 4:15, 12:16 <b>stole</b> [1] - 8:21 <b>stolen</b> [4] - 8:18, 8:19, 14:6, 15:16 <b>stop</b> [1] - 12:17 <b>strange</b> [1] - 8:22 <b>STREET</b> [1] - 1:23 <b>strenuously</b> [1] - 11:5 <b>stuff</b> [2] - 7:15, 15:15 <b>subject</b> [3] - 11:19, 13:4, 17:4 <b>submit</b> [1] - 6:10 <b>subset</b> [1] - 14:5 <b>substantially</b> [1] - 12:7 <b>succeed</b> [1] - 15:11 <b>success</b> [3] - 14:4, 14:19, 15:8 <b>sufficient</b> [1] - 14:17 <b>sufficiently</b> [1] - 13:9 <b>supplement</b> [6] - 6:5, 6:13, 7:7, 9:21, 11:23, 11:24 <b>supplemental</b> [1] - 7:18 <b>supplementation</b> [3] - 7:7, 7:20, 8:4 <b>support</b> [1] - 9:17 <b>supposed</b> [1] - 3:14 <b>supposedly</b> [1] - 11:18 <b>suspended</b> [2] - 5:12	2:12, 3:7, 3:10, 3:15, 3:18, 3:22, 3:23, 4:1, 4:2, 4:6, 4:10, 4:17, 5:22, 6:1, 6:16, 7:22, 8:7, 10:9, 11:16, 12:17, 14:24, 15:12, 15:22, 16:24, 17:11 <b>thereafter</b> [1] - 16:3 <b>therefore</b> [1] - 14:13 <b>third</b> [2] - 5:17, 6:7 <b>three</b> [2] - 6:11, 11:18 <b>throw</b> [1] - 17:5 <b>timeline</b> [1] - 5:19 <b>Title</b> [1] - 18:9 <b>trade</b> [44] - 5:9, 5:13, 5:15, 5:19, 6:2, 6:10, 6:23, 7:3, 7:12, 7:14, 8:8, 8:10, 8:23, 9:6, 9:14, 9:17, 9:25, 10:2, 10:6, 11:3, 11:7, 11:19, 11:22, 12:1, 12:10, 12:13, 13:3, 13:6, 13:9, 13:17, 13:22, 14:6, 14:15, 14:18, 15:4, 15:14, 15:17, 15:24, 16:22, 16:25, 17:3, 17:6 <b>TRANSCRIPT</b> [1] - 1:12 <b>transcript</b> [2] - 18:10, 18:12 <b>transferred</b> [1] - 4:21 <b>treatment</b> [1] - 10:17 <b>trial</b> [3] - 11:12, 16:16, 16:18 <b>triggered</b> [1] - 17:2 <b>TRO</b> [1] - 12:21 <b>TRO-type</b> [1] - 12:21 <b>true</b> [1] - 18:10 <b>try</b> [1] - 9:16 <b>trying</b> [1] - 15:9 <b>turn</b> [1] - 8:22 <b>two</b> [4] - 10:11, 10:13, 13:12, 14:2 <b>type</b> [1] - 12:21	<b>utilize</b> [2] - 11:25, 13:2 <b>V</b> <b>vast</b> [1] - 15:16 <b>vendor</b> [1] - 10:20 <b>versus</b> [2] - 3:11, 3:23 <b>view</b> [1] - 11:15 <b>volume</b> [4] - 8:16, 10:6, 14:9, 15:9 <b>vs</b> [1] - 1:7 <b>W</b> <b>waiting</b> [2] - 6:14, 7:2 <b>waiver</b> [1] - 9:20 <b>wants</b> [1] - 7:23 <b>WATKINS</b> [1] - 2:8 <b>weeds</b> [1] - 9:8 <b>week</b> [1] - 5:17 <b>weeks</b> [2] - 6:11, 11:19 <b>WEST</b> [1] - 1:23 <b>Western</b> [3] - 9:25, 12:6, 14:22 <b>willing</b> [1] - 6:5 <b>WINGET</b> [1] - 2:13 <b>words</b> [1] - 13:6 <b>worth</b> [1] - 9:8 <b>WU</b> [1] - 1:3 <b>Y</b> <b>year</b> [2] - 10:18, 10:23 <b>York</b> [5] - 2:6, 2:15, 4:20
<b>T</b> <b>TELEPHONIC</b> [1] - 1:13 <b>terms</b> [2] - 12:21, 14:3 <b>TERRI</b> [4] - 1:22, 18:6, 18:19, 18:20 <b>THE</b> [27] - 2:3, 2:7,	<b>U</b> <b>U.S</b> [1] - 1:3 <b>under</b> [1] - 17:7 <b>understood</b> [2] - 14:16, 17:9 <b>unique</b> [1] - 8:15 <b>uniquely</b> [1] - 9:6 <b>UNITED</b> [1] - 1:1 <b>United</b> [4] - 3:8, 18:7, 18:9, 18:14 <b>unless</b> [2] - 15:13, 16:6	